In the High Court of Judicature at Madras

Dated: 14.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal No.463 of 2002

Tamil Nadu State Transport
Corporation (Madurai Division-V) Ltd.,
Virudhunagar. ..Appellant

..vs..

1. The Regional Transport Authority,
   Ramanathapuram.

2. The Regional Transport Authority,
   Virudhunagar.

3. The Secretary,
   The Regional Transport Authority,
   Virudhunagar.

4. N.Anandam ..Respondents
   Prop. Meenambigai Roadways,
   Aruppukottai.

Writ Appeal filed under Clause 15 of the Letters Patent, against the Order passed in W.P.No.16562 of 2001 dated 07.09.2001.

WP No. 16562/01: Petition presented to issue a Writ of Mandamus, directing the third respondent herein to implement the order of the first respondent made in R.No. 30768/A1/1982 dated 29.1.83 and confirmed by the State Transport Appellate Tribunal in Appeal No. 339/83 dated 25.2.84 forthwith by convening the timing Conference and giving effect to the variation granted by the first respondent in respect of Vehicle No. TNR 3565 since replaced by TN-67/C-2773 forthwith.

For Appellant : Mr.R.Kamalanathan

For Respondents : Mr.K.Ilango,
Spl.G.P.for R1 to R3
Mr.N.Gopalakrishnan for R4

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JUDGMENT

(Judgment of the Court was delivered by P.SATHASIVAM, J.,)

The above Writ Appeal is directed against the Order of the learned single Judge dated 07.09.2001 made in W.P.No.16562 of 2001, in and by which, the learned Judge issued a direction to the third respondent therein, namely, the Secretary, The Regional Transport Authority, Virudhunagar, to implement the order of the 1st respondent, namely, The Regional Transport Authority, Ramanathapuram, made in R.No.30768/A1/1982 dated 29.01.1983, by convening the timing conference within a period of six weeks from the date of receipt of a copy of that order.

2. Heard the learned counsel appearing for the appellant as well as respondents including contesting 4th respondent.

3. In view of the order to be passed hereunder, we are of the view that it is unnecessary to refer all the factual details, as stated by the appellant as well as contesting 4th respondent. It is not in dispute that the 1st respondent herein, namely, Regional Transport Authority Ramanathapuram, by his Proceedings dated 29.01.1983 accepted the claim of the applicant / 4th respondent herein and allowed his application, after hearing the objections of all the parties including Pandian Roadways Transport Corporation, Madurai, the present appellant herein. Against the said order, the then Pandian Roadways Corporation Limited, (present appellant) preferred an appeal before the State Transport Appellate Tribunal (for short "STAT"), Madras, in Appeal No.399 of 1983. It is not in dispute that STAT, by order dated 25.02.1984 confirmed the proceedings of the Regional Transport Authority, Ramanathapuram and dismissed the appeal. Admittedly, the then Pandian Roadways Corporation (appellant herein) has not challenged the order of the STAT dated 25.02.1984 and the said order has become final. No doubt, after the order of the STAT, the 4th respondent herein has not approached this Court for further direction for implementation and according to the learned counsel, he was making representations to the authorities concerned for implementation of the order dated 29.01.1983 and finally approached this Court by filing writ petition in W.P.No.16562 of 1991. The learned single Judge, after noting the order of the 1st respondent dated 29.01.1983 and the confirmation order of the STAT dated 25.02.1984, in the absence of challenge with regard to the same by the State Transport Corporation and in view of the position that those facts were not disputed before the learned Judge, issued a direction as mentioned above.

4. Before us, learned counsel appearing for the appellant, by drawing our attention to Section 7 of Tamil Nadu Act 41 of 1992

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submitted that the application of the 4th respondent for grant of new permit on a notified route and all other proceedings shall abate. By drawing our attention to Section 80(3) of the Motor Vehicles Act, 1988 contended that the application for variation amounts to an application for the grant of a new permit, which cannot be in view of the Tamil Nadu Act.

5. Learned counsel for the applicant/contesting 4th respondent herein submitted that the relevant provision applicable to the case on hand is Section 10 of the Tamil Nadu Act, which reads as under:

> "Notwithstanding anything contained in Chapter V or VI including Section 98 of the Motor Vehicles Act, all proceedings taken for the grant of, and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit during the period commencing on the 4th day of June 1976 and ending with the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, for all purposes, be deemed to be and to have always been taken or passed in accordance with the provisions of this Act as if this Act had been in force at all material times"

According to him, inasmuch as variation was granted by the 1st respondent as early as on 29.01.1983 i.e.within the cut-off date, namely, 04.06.1976 and 30.06.1960, the order passed by the said authority is saved by the above provision. Apart from the above provision, learned counsel for the 4th respondent heavily relied on the decision rendered by the Division Bench of this Court dated 26.09.2006 made in W.A.No.1661 of 2000, Order of a learned single Judge dated 08.12.2000 in W.P.No.9302 of 1995 and order dated 26.09.2001 made in W.P.No.14014 of 1995. The Division Bench, after considering the provisions of Tamil Nadu Act 41 of 1992 as well as similar objections on identical factual circumstances has concluded as follows:

> "8. The object for the enactment of the Tamil Nadu Act 41 of 1992 is only to protect and save all proceedings taken for the grant and all orders passed granting permits or renewal or transfer of such permits or any variation, modification, extension or curtailment of the route or routes specified in a stage carriage permit, and, for all purposes shall be deemed to be and to have always been taken or passed in accordance with the provisions of the said Act as if the said Act had been in force at all material times. The enactment became necessary in view of the judgment of the Supreme Court in Pandiyan Roadways Corporation case (supra). In fact, by insertion of Section 217A, all permits including variations under the old Act are saved. Though the said section is not happily worded in express terms as

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to the validation of the permits granted under the old Act, the undisputed fact is that any certificate of fitness or registration or licence or permit issued or granted under the old Act could be renewed under the new Act. The provisions of Section 217A should be read keeping in mind the object of insertion of the said section. When the legislature intended for inclusion of a provision for renewal of permits granted under the old Act, it must necessarily mean and should be understood to include the validation of all permits, variation etc., granted under the old Act.

9. In T.P.K.Thilagavathy ..vs.. The Regional Transport Authority, Periyar District, Erode and others reported in 1995 (1) SCC 456, while considering the purport of the Act, the Supreme Court held that "the purport of the Act was to protect these operators who had been issued permits between 1976 and 30.6.90". The Tamil Nadu Act 41 of 1992 is a piece of "validating enactment" and going by the very object of the Act, the permits granted under the old Act including the variation are saved".

The Division Bench has also approved the views expressed in the Orders made in W.P.Nos.9302 of 1995 dated 08.12.2000 and 14014 of 1995 26.09.2001.

6. In view of the statutory provisions and of the fact that the order of the 1st respondent dated 29.01.1983 was saved by Section 10 of the Tamil Nadu Act 41 of 1992, as explained by the Division Bench in their Order dated 26.09.2006 and taking note of the conduct of the appellant in not challenging the order of the STAT dated 25.02.1984 in Appeal No.399 of 1983, we are unable to accept the contentions raised by the learned counsel for the appellant. Consequently, the writ appeal fails and the same is dismissed. No costs.

7. In view of the above order dismissing the appeal of the Appellant Transport Corporation, the second respondent is directed to implement the order granting variation dated 29.01.2003 as confirmed by the learned single Judge dated 07.09.2001, within a period of eight weeks from the date of receipt of a copy of this Order.

gl

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Regional Transport Authority,
   Ramanathapuram.

2. The Regional Transport Authority,
   Virudhunagar.

3. The Secretary,
   The Regional Transport Authority,
   Virudhunagar.

1 CC TO THE G.P, SR 62539

1 CC TO MR.N. GOPALAKRISHNAN, SR 62344

1 CC TO MR.V.R. KAMALANATHAN, SR 62367

Judgment in Writ Appeal No.463 of 2002

14.12.2006

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